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2 BEFORE THE PERSONNEL APPEALS BOARD  
3 STATE OF WASHINGTON  
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5 ROBERT STAMEY, ) Case No. RULE-01-0009  
6 Appellant, )  
7 v. ) FINDINGS OF FACT, CONCLUSIONS OF  
8 DEPARTMENT OF CORRECTIONS, ) LAW AND ORDER OF THE BOARD  
9 Respondent. )  
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11 I. INTRODUCTION  
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13 1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER  
14 T. HUBBARD, Chair, and LEANA D. LAMB, Member. The hearing was held at the office of the  
15 Personnel Appeals Board in Olympia, Washington, on November 29, 2001. GERALD L.  
16 MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

17 1.2 **Appearances.** Appellant Robert Stamey appeared *pro se*. Art Haro, Human Resource  
18 Manager, represented Respondent Department of Corrections.  
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20 1.3 **Nature of Appeal.** This is an appeal of an alleged violation of WAC 356-18-060(1)(a).  
21 Appellant asserts that Respondent unilaterally required a physician's statement for any use of sick  
22 leave during a job action.  
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24 1.4 **Citations Discussed.** WAC 358-30-170; WAC 356-18-060(1)(a).  
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## II. FINDINGS OF FACT

2.1 Appellant Robert Stamey is a Correctional Officer and permanent employee for Respondent Department of Corrections at the Cedar Creek Corrections Center. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 30, 2001.

2.2 On April 17, 2001, Joe Lehman, Secretary of the Department of Corrections (DOC), issued a memorandum to all DOC employees addressing the department's policy on work schedules and absences during concerted job actions. The memo stated that the Washington Federation of State Employees was authorizing a concerted job action, and therefore, staff requesting unscheduled absence from work during the same time period would "be considered authorized leave without pay unless a medical certificate is provided which documents the necessity for sick leave."

2.3 On April 18, 2001, Secretary Lehman issued a second memo clarifying the requirement of a medical certificate for unscheduled sick leave requests. The memo stated as follows:

In accordance with the Merit System Rules or your Collective Bargaining Agreement, the expectation for providing of a medical certificate will be in effect if a concerted job action is occurring in your institution/facility . . . Providing a medical certificate **may be** a requirement for these special circumstances. It is not an ongoing process as is being placed on medical verification.

2.4 Appellant did not request sick leave after the memorandums were issued.

2.5 On April 30, 2001, Appellant filed an appeal with this Board alleging that Respondent violated WAC 356-18-060(1)(a) by denying him the right to use sick leave and, as a result, requiring him to work while ill because he was unable to make the necessary arrangements to obtain a physician's statement on short notice.

### III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that he was ill on or about April 24, 2001, but felt he could not call in sick because of Secretary Lehman's directive to unilaterally require a physician's statement to accompany the use of sick leave. Appellant argues he was required to work while ill because he could not make the necessary arrangements to obtain the required physician's statement on short notice. Appellant further contends that Secretary Lehman exceeded his limits of authority by making a determination of "suspected misconduct" and requiring medical verification. Appellant argues that Respondent violated WAC 356-18-060(1)(a) by denying him use of his sick leave.

3.2 Respondent argues that Appellant failed to prove any violation of WAC 356-18-060(1)(a) because he presented no evidence that he requested and was denied the use of sick leave. Respondent argues that Appellant could have accessed his sick leave without restrictions because the memo did not apply to him. Respondent also argues Appellant should have known that the memo did not apply to him because the memo applied to members of the Washington Federation of State Employees who were expected to be engaged in the job action and that Appellant was not a member of that union. Respondent also asserts that Appellant had a duty to seek clarification from the department if the memo was unclear.

### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

1 4.3 The issue here is whether Respondent violated WAC 356-18-060(1)(a) by denying  
2 Appellant the use of unscheduled sick leave. WAC 356-18-060(1)(a) addresses use of paid sick  
3 leave, and states as follows:

4 Personal illness: accumulated sick leave shall be granted when an employee is  
5 required to be absent from work for any of the following reasons:  
6 (a) Illness or injury of the employee or preventative health care.

7 4.4 Appellant presented no evidence that he requested the use of paid sick leave due to personal  
8 illness and that he was subsequently required to provide medical verification. Under the  
9 circumstances presented here, there is no evidence to support that Respondent violated WAC 356-  
10 18-060(1)(a). Appellant has not met his burden of proof, and the appeal should be denied.

11  
12 **V. ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Stamey is denied.

14  
15 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

16  
17 WASHINGTON STATE PERSONNEL APPEALS BOARD

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19 \_\_\_\_\_  
20 Walter T. Hubbard, Chair

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22 Leana D. Lamb, Member